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12 [Additional Moving Defendants and Counsel Listed on
13 Signature Pages]

14 UNITED STATES DISTRICT COURT
15 NORTHERN DISTRICT OF CALIFORNIA
16 OAKLAND DIVISION

17
18 IN RE CALIFORNIA BAIL BOND

Master Docket No. 19-cv-00717-JST

19 ANTITRUST LITIGATION

CLASS ACTION

20
21 THIS DOCUMENT RELATES TO:

**DEFENDANTS' RESPONSE TO
AUTHORITIES SUBMITTED BY
PLAINTIFFS AT ORAL ARGUMENT**

22
23 ALL ACTIONS

Judge: Hon. Jon S. Tigar
Hearing Date: August 26, 2020
Courtroom: 2, 4th Floor
Time: 2:00 p.m.
Trial Date: Not Set

1 Pursuant to the Court’s instructions at the August 26, 2020 hearing on Defendants’ Motion to
2 Dismiss (*see* ECF No. 132), Defendants submit the following response to the two cases presented by
3 Plaintiffs for the first time at oral argument (*see* ECF No. 133):¹

4 *In re Delta/Air Tran Antitrust Litigation* and *In re Domestic Airline Travel Antitrust Litigation*
5 are out of circuit district court decisions and neither answers the question posed by the Court: what,
6 as a matter of law, is the minimum that Plaintiffs must plead to show that any particular Defendant
7 participated in the alleged antitrust conspiracy? The Ninth Circuit set a clear floor for such allegations
8 in *Kendall v. Visa U.S.A., Inc.*, when it held that a complaint must “answer the basic questions: who,
9 did what, to whom (or with whom), where, and when” regarding how **each** individual defendant first
10 joined, and then participated in the alleged cartel. 518 F.3d 1042, 1048 (9th Cir. 2008). Critically,
11 the Ninth Circuit explained that “parallel conduct, even conduct consciously undertaken” was not
12 enough to meet this threshold—the plaintiff must also allege “further circumstance[s] pointing toward
13 **a meeting of the minds.**” *Id.* (quoting *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 557 (2007))
14 (emphasis added). The SCAC’s rote, copy-pasted allegations fail this clear test. Plaintiffs have only
15 alleged supposed parallel conduct by the Defendants without additional facts suggesting when, where,
16 or how Defendants reached any kind of agreement (let alone one that allegedly spanned 16 years and
17 28 Defendants, with the number of Surety Defendants doubling over the class period). As in *Kendall*,
18 Plaintiffs “pledged only ultimate facts, such as conspiracy, and legal conclusions. They failed to plead
19 the necessary **evidentiary facts** to support those conclusions.” 518 F.3d at 1047-48 (emphasis added).

20 Plaintiffs’ new authorities only underscore the weakness of their complaint in this regard. In
21 both cases, the plaintiffs made far more detailed allegations about the formation of the alleged
22 conspiracy, including who attended specific meetings, what was discussed at those meetings that
23 would suggest unlawful collusion, how defendants aligned their business practices after meetings, and
24 additional statements that were made by specific defendants during the same time period that
25 evidenced a meeting of the minds occurred. The plaintiffs in *Domestic Airline Travel* for instance
26 were able to plead a series of specific statements (1) from corporate officers at each and every
27

28 ¹ Abbreviations herein have the same definitions as in Defendants’ Motion to Dismiss (ECF No. 112).

1 defendant; (2) that were close together in time; and (3) which were immediately followed—in a
2 notable change from prior trends—by passenger capacity cuts at each defendant airline. *See* 221 F.
3 Supp. 3d 46, 62-65 (D.D.C. 2016). The plaintiffs in that case also quoted specific statements made by
4 defendants’ executives at multiple conferences and trade meetings regarding capacity cuts that
5 suggested defendants were working to enforce the conspiracy. *See id.* at 65. Similarly, in *Delta/Air*
6 *Tran*, the plaintiffs alleged not a handful of isolated statements but a “roughly six month dialogue”
7 between both defendants about imposing new bag fees from both named defendants over a discrete
8 period, which were followed immediately by each defendant reducing capacity and introducing new
9 fees. 733 F. Supp. 2d 1348, 1354-57 (N.D. Ga. 2010). Crucially, the court noted that it was these
10 changed business practices “combined with the preceding communications” that together gave rise to
11 a plausible inference of conspiracy. *Id.* at 1361 (emphasis added).

12 Here by contrast, as in *Kendall*, Plaintiffs do not allege any statements of any kind as to the
13 vast majority of Defendants. (*See* Defs.’ Mot. Appx. A.) And the handful of alleged statements that
14 Plaintiffs rely on were not subsequently followed by uniform conduct, but by increased diversification
15 both in the premium rates offered by different Defendants and in the criteria used for standard vs.
16 preferred rates. (*See id.* at Appx. B.) Indeed, many of the Defendants in this case were not even in
17 the California bail bond market when the statements were made. (*See id.*) Furthermore, the SCAC’s
18 allegations regarding trade association meetings pale in comparison to the complaints in *Domestic*
19 *Airline Travel* and *Delta Air Train*. Here, Plaintiffs allege that two relevant trade association meetings
20 occurred over the 16-year class period, do not even allege that a single Surety Defendant attended one
21 of the meetings, fail to identify any Defendant attendees at the second meeting, and point to no specific
22 statements made by any attendee of either meeting. (*See* Defs.’ Mot. at 30-32.)

23 At the hearing, Plaintiffs’ repeated refrain was that the law does not require them to do the
24 impossible. This is correct. As *Domestic Airline Travel* and *Delta/Air Tran* illustrate, it is entirely
25 possible for an antitrust plaintiff to plead factual allegations that answer “basic questions” about how
26 the alleged conspiracy was formed and how each individual defendant played a role in it, as the law
27 requires in the Ninth Circuit. *Kendall*, 518 F. 3d at 1048. Plaintiffs have simply failed to do so here.
28 The SCAC fails not because of some impossibly high legal standard, but because it has no specific

1 allegations about how each individual defendant founded, joined, or operated in a purportedly vast
2 and long running conspiracy. Accordingly, the Court should dismiss the SCAC in its entirety.

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ATTESTATION PURSUANT TO CIVIL LOCAL RULE 5-1(i)(3)

I, Beatriz Mejia, attest that concurrence in the filing of this document has been obtained from the other signatories. Executed on August 28, 2020, in San Francisco, California.

/s/ Beatriz Mejia

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